

**VILLAGE OF NEW PALTZ PLANNING BOARD  
REGULAR MEETING FEBRUARY 17, 2009**

**Call to order:** The meeting was called to order at 7:10 p.m.

**Members Present:** Raymond Curran, Chair; Marion DuBois, Terence Ward, Linda Welles

**Board Consultants:** Drayton Grant, Attorney, Grant & Lyons

**Also present:** Naomi Gaskin, Jane Bullowa, Jack Zand, Paul Edlund, Butch Dener, Sandy Kaplan, Chris Watkins, Liz Pickett, Shari Osborne, Michael Zierler, Village Trustee and other members of the public.

**Announcement from the Chair:**

After the public hearing on 175 Main Street, the Board will discuss changes to the planning board fees, a proposed Memorandum of Understanding introducing escrow accounts to cover the cost of application review, and interview two candidates for the vacant seat on the Board.

**Approval of Minutes:**

A motion was made by Dr. Welles to approve the minutes of the January 20, 2009 workshop/regular meeting. The motion was seconded by Mr. Ward and approved by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye. Ms. DuBois did not vote as she did not attend the January 20, 2009 meeting.

**Applications with Public Hearings:**

**PB08-171: Bruce Kazan. 175 Main Street. [SBL: 86.144-1-10 (B-1)]**

Amended Site Plan: compliance with Health Department regulations and other changes.

Ulster County Planning Board Review: No County Impact

Applicant Present: Bruce Kazan, Owner; Richard Miller, Architect; Larry Wolinsky, Attorney, Tobias Lake, Attorney.

Planning Board Consultant: Drayton Grant, Attorney.

**Description of the Project**

The applicant said that while the architect was working on the final design plans several problems were encountered that required various changes to the site plan. He was returning to the board to request approval of those changes and complete the process of site plan amendment.

Mr. Miller compared the original and revised site plans and the following changes were explained and indicated on the revised site plan:

1. The overhead garage door was removed and replaced by double doors in response to the Health Department standards prohibiting such an indoor loading area in a food service operation. This in turn required space to be designated on the property for loading/unloading.
2. The kitchen/prep area was relocated to the section previously designated for internal unloading to meet the ceiling height clearance for the upgraded ventilation hood. The new system is more pollutant free and noiseless.
3. Two windows were converted to doors in the front of the building for flexibility of internal design, egress and aesthetics.
4. The angle of the handicapped ramp was considered too steep and adjusted to better meet the site conditions.
5. Windows were upgraded along Main Street for cost effectiveness and aesthetics.
6. Planters were changed due to the additional path requested by the Board.
7. A 6'H fence was proposed on the north side of the building to buffer the utility and outside loading area – which faces Main Street and the commercial district.

**Public Hearing:**

Dr. Welles made a motion to open the public hearing. The motion was seconded by Ms. DuBois and passed unanimously by the Board. The vote was as follows: R. Curran – aye; M. Dubois – aye; T. Ward – aye; L. Welles – aye.

A number of neighbors and residents of Millrock Road spoke in opposition to the project including Jane Bullowa, adjacent neighbor to the project; Jack Zand, Attorney for the residents of Millrock Road; Naomi Gaskin; Paul Edlund, Sandy Kaplan, Chris Watkins, Terry Dungan and Liz Pickett.

Areas of concern and opposition included but were not limited to the following:

- Intent of the Project. There was a concern that modifications to the plan represented a change in intent/use from the initial presentation to the board and neighbors and a belief that progressive changes will result in a restaurant and the integrity of the building being compromised.
- Loading Area & Parking. Given the necessity of an outside loading area, some residents believed the on-site parking area was now inadequate to meet the needs of the patrons, employees, residents and delivery service at the site. They felt that traffic flow in the parking aisle would be blocked during deliveries, making it impossible for parked cars to leave and others to enter. The situation was considered more problematic because there would now be deliveries to the grocery store in addition to the catering kitchen. They speculated that insufficient/inaccessible on-site parking for employees and patrons would result in increased parking on Millrock Road.

There was also a question about relocating the indoor loading area to another part of the site.

- Character of the neighborhood/overdensified: It was stated that since the useable square footage had doubled (from the initial approval with the addition), the structure now dwarfed the surrounding buildings. This was speculated to be out of compliance with the code which required development to have minimal impact on the neighborhood.
- Procedure and Code Compliance: There were allegations that the applicant did not follow proper procedures regarding changes already made to the site and that the Planning Board failed to address building code violations and other concerns noted by the neighbors (including an existing lawsuit against the applicant filed by the neighbors).
- Traffic: There was critique that the traffic study prepared by the Board's consultant focused on the impact on Main Street, not Millrock Road and that requests to revisit the traffic impact in the future were denied by the Board.
- Future Use: There was concern that an unauthorized/unintended use, in the form of an outdoor café, could arise from the plan as currently presented.

Butch Dener spoke in support of the project. He noted the ethical character of the applicants and the successful nature of their business that caters to the community. Although business has dwindled in this area (of Main Street), he emphasized the building is a commercial structure in a business district and that the applicant is entitled to develop it within the confines of the code. He said there will always be some impact on residential neighborhoods that abut commercial areas.

There were no further comments from the public. A motion was made by Dr. Welles to close the public hearing. The motion was seconded by Mr. Ward and carried unanimously by the Board. The vote was as follows: R. Curran – aye; M. DuBois – aye; T. Ward – aye; L. Welles – aye.

**Discussion and Vote**

The applicant was asked to respond to the issues raised by the board and the public.

Loading/unloading area/Traffic: The timing for loading/unloading is based on the event schedule. There can be breakfast, lunch or dinner events and the majority are over by 10pm. There are two

cargo vans. The actual loading/ unloading process takes approximately 15 minutes (not longer than 30 minutes) and staff is available to move the vans if required. The vans do not remain on site beyond that time.

Mr. Wolinsky noted the requirements of 35' x 12' x14'h for loading areas and quoted the exception for the B-1 district in section 212-45B1 of the code: "*Required off-street parking loading area in B-districts may utilize space assigned for required off-street parking provided that such loading uses shall not occur for more than three hours of the served use's daily business hours.*"

There will be no additional trucks or deliveries for the grocery; grocery items will be included in the fruit and produce deliveries to the catering kitchen.

Parking/traffic flow: The average van is 8' wide x 10' long x 7' high. Mr. Miller illustrated that if the vans were parked close to the building, the parking aisle was wide enough to allow a car to pass the van. Although it could not accommodate cars backing in or out of the parking slots, staff would be available to move the vans if required. Vendors have already been instructed, in writing, to unload large vehicles on Main Street and avoid Millrock Road.

The applicant has more than the required number of parking spaces for the retail and residential uses in the building. He noted that the attic is part of the existing apartment (2 bedrooms are on the lower level, the living room is the attic area) and, with the exception of the baker, the catering personnel will staff the grocery.

Parking spaces, parking aisles, parking scenarios for the cargo vans, and access conditions of the parking lot during deliveries were reviewed in detail.

Alternative inside loading area: As the ceiling height of the original building is 7'3"H, it would not be advisable to have a 7'H van use that as a loading area. The new section of the building has higher ceilings and remains consistent with its approval.

Handicapped ramp: Due to a misinterpretation of the topography, the ramp was reconfigured and relocated to ADA compliance after the surveyed was submitted. Because this was an existing site with proper dimensions, no survey was submitted with the site plan; which, the building inspector said, is not an uncommon practice.

Intent to use the front area as an outdoor café (external seating): There is no intention to create such a use. Any change in use would require the applicant to return to the Board for approval. Given the need for greater flexibility in difficult economic times, the applicant has returned to the board in successive stages to adapt changes to meet the needs of potential tenants.

The applicant said there is no table service intended for this project. The chairs outside are for meetings with their catering customers. He clarified that the grocery is the venue for the artisan breads and other local foods/specialty items that will be prepared by the same catering staff. The term grocery was applied because it was the closest comparable "use" in the code.

He explained that the 2 French doors entering into the same space allow him more flexibility in presenting the space to potential tenants. Once the tenants are confirmed, the space will be divided/ designed to reflect their needs.

The Chair returned to the issues before the Board tonight: to determine whether the modifications made by the applicant since the previous approval (e.g. reconfiguration of the ramp, change of the garage doors, relocation of the kitchen, conversion of windows and doors, replacement of indoor loading area to an outdoor area) create an impact that can be sufficiently mitigated.

Landscape buffering: There was a lengthy review of various layers of landscape buffering for the entire site and especially for reducing any impact from the outdoor loading area on the adjacent neighbor at 3 Millrock (Jane Bullowa) including fencing along the rear of the property, the north side of the addition, to further shield and buffer the HVAC unit and the loading area. Regarding

additional buffering, Ms. Bullowa said another fence would not be helpful and preferred more intensified plantings. The applicant was agreeable to meet her needs.

Tractor Trailer Deliveries on Main Street: The applicant said deliveries from large vehicles such as tractor trailers would occur on Main Street on Wednesdays and Fridays. The Department of Transportation has approved tractor-trailer deliveries along Main Street, S. Chestnut/Rte 32 and Academy Street. The building inspector confirmed Rte 299 as DOT's recommended route for large vehicle transport.

The Chair summarized the site plan amendment for the following changes to the original plan:

1. The elimination of the garage door at the previously designated delivery area
2. The reconfiguration of the handicapped ramp
3. The addition of a door on the west side of the building on the first floor
4. The removal of doors and large windows on the west wall located on the southern portion of the basement
5. The relocation of the kitchen
6. A proposed 6'H wooden privacy fence on the north side of the building to buffer the utility unit and loading area.
7. The addition of doors on the first floor of the south side of the building
8. The replacement of more efficient and aesthetically pleasing windows along the Main Street side of the building
9. The upgrading of the ventilation system

There was a discussion on the use of various types of awnings/canopies to create a type of enclosure (similar to a carport) which would act as an additional sound absorber, and visual buffer for the northern neighbor, without losing the line of the building.

The board conferred on approval conditions regarding landscape buffering of the neighboring property to the north, restrictions on deliveries by tractor trailers and a canopy along the west side (addition) of the building to mitigate impacts from the external loading area. If approved, a revised site plan indicating the landscaping plan with the neighboring property and the canopy would be required.

Mr. Ward said he was generally supportive of the project. Of all the changes already made to the site, he felt the applicant had the least justification for converting windows to doors on the first floor without returning for Board approval. He proposed a condition of approval requiring this configuration be restored to the original design as presented on the approved site plan. The applicant explained the change provided greater flexibility to divide the space for prospective tenants, enhanced aesthetic value with no negative impacts and would be costly to restore the original plan. Regarding perceived future intent, it was noted that the applicant would have to return to the Board for any additional use.

Mr. Ward still felt there was no justification for this particular change having been implemented. He felt this was undoing the Planning Board's hard work in developing a carefully bound site plan in concert with the concerns of the neighbors.

There were no further comments or discussion by the Board. It was noted this application was a Type 2 action, exempt from further SEQR review. Chair Curran said the only issue before the Board was the question of impact.

A motion was made by Ms. DuBois to approve the amended site plan with the following conditions:

- The applicant has agreed to meet with the neighbor (the property owner of 3 Millrock Road) to create a landscaping plan which must be approved by the Board's consultant Al Wegener and indicated on the site plan.
- Tractor trailers are prohibited from entering and delivering on the site.
- There must be a permanent awning added, between 4' -6' wide and the length of the addition above the area where the loading/unloading will occur. The awning is subject to the approval of the building inspector and must be shown on the site plan.

The motion was seconded by Dr. Welles. The motion was approved by a vote of 3 ayes to 1 nay. The vote was as follows: R. Curran – aye; M. DuBois –aye; T. Ward – nay; L. Welles – aye.

**Other Business:**

**Proposed Increases to the Planning Board Fee Schedule:** Noting the fee schedule had not been updated since 2000, the Board reviewed and discussed proposed increases based on the fee structures of comparable municipalities. Backup information and recommendations were provided by the Board's consultant, Dave Clouser, Clouser & Associates.

A motion was made by Dr. Welles to make a recommendation to the Village Board to adopt the proposed planning board fee schedule with the inclusion of the \$300 fee for major site plan amendment. The motion was seconded by Mr. Ward and carried unanimously by the Board. The vote was as follows: R. Curran - aye; M. DuBois – aye; T. Ward – aye; L. Welles – aye.

**Proposed Memorandum of Understanding (MOU)/Escrow Account:** Noting the Village Code provides for reimbursement of planning board costs by applicants, the Board reviewed a draft MOU to be added to all planning board applications which would arrange for pre-payment of anticipated costs in escrow accounts and for the replenishment of those accounts as determined by the planning board. There was a long discussion about the intent and content of the document including when to have an escrow account, who/how the amount would be determined, the replenishment clause, and additional phrasing suggested by Ms. Grant, Trustee Zierler and Mayor Dungan.

A motion was made by Mr. Ward to recommend to the Village the procedure (MOU) as amended by the Mayor and the Planning Board and that it be applied to all current projects as soon as practical. The motion was seconded by Ms. DuBois and carried unanimously by the Board. The vote was as follows: R. Curran - aye; M. DuBois – aye; T. Ward – aye; L. Welles – aye.

**Executive Session:**

Ms. DuBois made a motion to enter executive session to interview two candidates, Mr. Rocco and Mr. Loza, for the vacant seat on the Planning Board. The motion was seconded by Dr. Welles and approved unanimously by the Board. A motion to close the executive session was made by Ms. DuBois, seconded by Dr. Welles and passed unanimously by the Board at 10:44pm.

Action taken: The Board recommended Mr. Rocco as a candidate for the remaining seat on the Board. The Chair will prepare a memo to that affect for approval by the Village Board of Trustees.

**Adjournment:**

Mr. Ward moved to adjourn the meeting at 10:45 pm; Ms. DuBois seconded the motion, and all voted in favor. The vote was as follows: R. Curran - aye; M. DuBois – aye; T. Ward – aye; L. Welles – aye.

Respectfully submitted,

Alison Shestakofsky  
Secretary to Village Planning Board  
Copies to: Trustee Michael Zierler  
David Clouser, Engineer

Drayton Grant, Attorney; Bob Chamberlin, Traffic Engineer  
Ted Fink, Planner